COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own Motion as to the propriety of the rates and charges set forth in M.D.T.E No. 17, filed with the Department on May 5, 2000 to become effective June 4 and June 6, 2000 by New England Telephone and Telegraph Company d/b/a Bell Atlantic – Massachusetts	)	D.T.E. 98-57, Phase III

REPLY BRIEF OF COVAD COMMUNICATIONS COMPANY

Antony Richard Petrilla
Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, DC 20005
(202) 220-0418 (tel)
(202) 220-0401 (fax)

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Covad Communications Company ("Covad"), through undersigned counsel, hereby submits its reply brief in the above-captioned matter.

ARGUMENT

I. COVAD AGREES THAT ALLOWING THE FCC TO RULE ON THESE ISSUES IN THE FIRST INSTANCE WILL BE MORE EFFICIENT FOR THE PARTIES AND THE DEPARTMENT

Noting that the FCC is considering line card collocation issues, Verizon urges the Department to wait for the FCC's decision to "ensure consistency." Verizon Brief, at 15. Covad does not object to that proposal in principle. Clearly, it is important for state and federal rules to be consistent, and Covad would not want to waste the resources of the parties and the Department attempting to resolve issues in Massachusetts that could be decided differently at the FCC – especially when, as Verizon alleges, it has not even deployed primary components of the equipment in question.

Moreover, Verizon asserts that, when it does deploy packet switching devices at remote terminals ("RTs"), it will give CLECs a fair opportunity to offer retail services simultaneously based upon the Packet at the Remote Terminal Service

("PARTS") architecture. Verizon Brief, at 4. Covad's overriding goal in this proceeding has been to make sure that it is on an equal footing with Verizon when it comes to offering retail DSL services over some form of the PARTS network configuration.[1]

For these reasons, Covad will agree to wait for the FCC decision so long as Verizon gives the Department and the parties to this case six (6) months advance notice before it deploys retail services using a PARTS-type architecture.[2] Such notice will enable the Department and the parties to take appropriate measures in the event that Verizon decides to roll out service before the FCC acts.[3]

II. VERIZON WEAKLY ARGUES THAT TELRIC PRICING WOULD NOT GIVE IT AN INCENTIVE TO DEPLOY PARTS

Verizon makes the *non-legal*, policy argument that applying TELRIC to the PARTS architecture would not give it the incentive to invest in the technology. Verizon Brief, at 7-8. It is not apparent where Verizon is going with this argument because, if the Department were to find that PARTS equipment constitutes one or more unbundled network elements, the Department would have no choice but to use TELRIC. In any event, it is worth pointing out that Verizon's policy arguments are not persuasive.

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[1] Despite Verizon's repeated arguments to the contrary, Covad has not sought to compel Verizon to buy, build or otherwise deploy PARTS equipment in the absence of a Verizon retail business plan to do so. *See, e.g.,* Verizon Brief, at 8, 9-10, 27.

[2] Providing six months notice should not be burdensome to Verizon because its retail operations plainly must develop business plans well in advance of offering services to end users.

[3] In case the Department chooses not to wait for the FCC, Covad provides additional arguments below opposing Verizon's brief.

It is a bit much for Verizon to suggest that it would not deploy a retail service merely because TELRIC would apply to the network elements used to offer the service. That is the tail wagging the dog. Verizon does not offer retail services with the hope that it can make money from selling the associated network elements to CLECs. Rather, Verizon offers retail services only when it believes it can make a profit from selling them to retail customers. And if Verizon believes there is profit to be made from selling a service to retail customers, it does not care whether CLECs also would offer the service using its unbundled network elements.

For example, Verizon and its sister companies have used line sharing equipment to offer DSL service to more than a million customers.[4] Verizon rolled out its retail DSL service, which is based upon line sharing technology, on March 24, 1999[5] -- a course of action that it undertook while the FCC actually was considering line sharing issues and approximately nine months before the FCC ruled that Verizon should make the high frequency portion of the loop available as a separate network element.[6] In fact, there is a remarkable similarity between now (when the FCC is about to consider unbundling PARTS architectures) and then (when the FCC considered unbundling line sharing). However, despite knowing that the FCC might unbundle the high frequency portion of the loop (which would then be priced at TELRIC), Verizon did not delay its retail DSL plans, because it believed there was

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4 On November 13, 2001, Verizon stated that it had surpassed one million retail DSL customers and hoped to reach 1.2 to 1.3 million by the end of 2001. *See* UBS Warburg 6th Annual Global Telecom Conference, http://investor.verizon.com/index.html, at slide 22.

5 *See* Verizon Response to Record Request No. 1 of Rhythms Links Inc.

money to made in the service. The same incentives are at work here. If there is money to be made from deploying a PARTS network architecture to retail customers, Verizon will offer such services without regard to the rulings of regulatory agencies.

III. VERIZON OVERSTATES ITS CASE IN ARGUING THAT LINE CARD COLLOCATION IS INEFFICIENT AND WILL NOT PROMOTE INNOVATION

Verizon argues that line card collocation is inefficient and that it will not, contrary to Covad's position, promote innovation. On the first point, Verizon asserts that each line card serves multiple voice and data circuits and dedicating them to one CLEC means they "would be unavailable for any other carrier, even though most CLECs would have no use for *all* of those circuits in every RT to which they connect."[7] Of course, Verizon fails to mention, much less refute, Covad's testimony that each line card currently handles only two end users.[8] So, the degree of breakage would be relatively minor.

Regarding its second point, Verizon claims that line card collocation would not promote innovation because CLECs would be using exactly same infrastructure as Verizon.[9] While that may be true in some cases, it may not necessarily be true in all cases. First, Verizon may or may not offer all qualities of service ("QOSs") that

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6 *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Third Report and Order in CC Docket No. 98-147 Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (rel. December 9, 1999).

7 Verizon Brief, at 28 (emphasis in original).

8 *See* tr. 807 (Gindlesberger).

9 *Id.*

line cards are capable of handling; at the hearing, Verizon could not say what QOSs it would offer if it provided PARTS to CLECs.[10]

Second, even if Verizon offers to CLECs the PARTS architecture configured for Asymmetric DSL service, it may not offer PARTS configured for Symmetric DSL service (such as G.SHDSL), although Alcatel is likely to produce such line cards.[11] CLECs that collocate these new line cards will be innovating. The Department has no way of resolving this argument, because there is no telling what kind of line cards Alcatel or another manufacturer (operating under a license from Alcatel) may produce.

CONCLUSION

For the foregoing reasons, the Department should adopt the recommendations set forth above.

Respectfully submitted,

Antony Richard Petrilla
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[10] *See* tr. 945-50 (Nawrocki).

[11] *See* Testimony of Larry Gindlesberger and Michael Clancy on Behalf of Covad Communications Company, at 13-14 ("Covad Testimony").